BEFORE

THE PUBLIC SERVICE COMMISSION

OF SOUTH CAROLINA

DOCKET NO. 2019-2-E

IN RE: Annual Review of Base Rates for Fuel Costs for South Carolina Electric & Gas Company	))))	**MOTION TO BIFURCATE PROCEEDING**

INTRODUCTION

COMES NOW the South Carolina Solar Business Alliance, Inc., ("SBA"), by and through counsel, and requests that the Public Service Commission of South Carolina, ("Commission") bifurcate proceedings in this Docket, so that issues related to the request of South Carolina Electric & Gas Company ("SCE&G," or "Company") to update SCE&G's avoided cost rates and to impose a Variable Integration Charge ("VIC") on solar Qualifying Facilities ("QFs") may be considered in a subsequent hearing, either in this Docket or another Docket.

SBA's request is based on considerations of efficiency and judicial economy, and arises from: (1) the recent passage by the South Carolina House of Representatives of H.3659, which includes provisions that would require this Commission to convene another avoided cost proceeding in 2019; and (2) SCE&G's agreement, as a condition of the merger approved by this Commission in Docket No. 2017-370-E (and consolidated Dockets), to propose a new avoided cost rate structure specific to solar plus storage resources in calendar year 2019. These developments create significant uncertainty as to whether a Commission Order addressing avoided cost and VIC issues would be rendered moot in a matter of months. SBA submits that it would not be prudent for this Commission to address avoided cost and VIC issues in the Hearing scheduled for April 3, 2019, given the substantial likelihood that those issues would have to be revisited by this Commission, this year. Rather, it would promote judicial economy and conserve the scarce resources of this Commission and the parties, including the South Carolina Office of Regulatory Staff, ("ORS"), to separate those issues from the proceeding and hear them later in 2019, once this uncertainty has been resolved.

BACKGROUND

The Company's proposed revisions to the PR-1 and PR-2 tariffs encompass two sets of issues, relating to avoided cost and VICs, that are likely to be substantially affected by developments expected later in 2019. Accordingly, it would not be reasonable or prudent, for this Commission to consider these issues at the Hearing scheduled April 3, 2019, and those issues should be bifurcated from other issues in the fuel Docket and considered at a hearing to be conducted later in the year.

A. The Company's Avoided Cost and VIC Proposals.

Consistent with the Company's approach in previous PR-2 proceedings, the Company proposes to significantly lower the rates to be paid to solar QFs. With respect to avoided cost, the Company proposes to reduce avoided energy rates by 18-23% in the three, five-year periods during the planning horizon -- although the Company does not provide any explanation for this significant decline in avoided energy costs. (See, Witness Rooks' Direct Testimony, Ex. AWR-15); (Also see, Witness Neely's Direct Testimony at 8:1-6). The Company maintains the position it took in the last fuel case Docket, that solar QF resources provide zero capacity benefit to the system.

The Company also proposes to assess a VIC on a significant portion of solar facilities that are already operational, under construction, or entering the construction phase, as well as all future solar facilities, based on the alleged impacts of "intermittent solar" on SCE&G's system, which according to the Company require SCE&G to "maintain additional reserves, forcing it to operate 8 [of] its plants at less than the most efficient levels for which they were designed." (See, Witness Raftery's Direct Testimony at 13:5-15). The charge proposed by the Company is $3.96/MWh, corresponding to "the levelized cost of maintaining additional operating reserves" in one of the projected cases. (See, Witness Tanner's Direct Testimony at 11:9-10). The proposed VIC is based on a study conducted in February 2019 by the Company's consultant. (See, Witness Tanner's Direct Testimony, Ex. MWT-2). The charge would apply to all solar QFs contracting under the revised PR-2 and PR-1 tariffs. (See, Witness Rooks' Direct Testimony, Ex. AWR-14, AWR-15).

Imposition of the VIC on new projects would reduce amounts paid to QFs by approximately 17% over the next five-year period. Even more problematically, the Company proposes to require not only new projects, but also a substantial portion of existing projects that have PPAs with the Company, to pay the VIC. (See, Witness Raftery's Direct Testimony at 13:17-14:19). The proposed charge would have a very significant detrimental effect on those projects – including facilities that are currently operational, under construction, or in late-stage development – potentially making those facilities financially non-viable. The potential result is major, material financial damages to independent project developers and their investors, let alone the multiple hundreds of construction workers and other laborers employed by those developers and their subcontractors in South Carolina.

In short, the Company is proposing a drastic change to its rates with grave implications for South Carolina's independent power producer industry. The VIC is a completely new concept in South Carolina that relies on complex technical analysis and assumptions about uncertain future system conditions. As discussed below, any Commission decision on the VIC would likely be obviated by events expected or known to be happening later in 2019.

B. The South Carolina Energy Freedom Act (H.3659).

On February 21, 2019, the *South Carolina Energy Freedom Act* (H.3659) was passed unanimously (110-0) by the South Carolina House of Representatives. This legislation is currently being considered by the Senate Judiciary Committee. The legislation has received broad stakeholder support, including that of Dominion Energy Incorporated, which testified in favor of the legislation before a subcommittee convened by the House Committee on Labor, Commerce, and Industry.

H.3659 includes several provisions that are directly relevant to considerations of judicial economy now before this Commission. These include the following:

- Within six (6) months after the effective date of the legislation, the Commission will be required to open a Docket for purposes of establishing and approving updated avoided cost rates and methodologies for each utility, in proceedings held separate from the utility's annual fuel Docket (§ 58-41-20(A).

- This Commission is authorized to independently employ third-party consultants and experts to carry out its duties, including, but not limited to, for the purpose of evaluating proposed rates, terms, calculations, and conditions under this section. And this Commission is required to engage a third party to submit a report that includes independently derived conclusions regarding each utility's calculation of avoided costs for purposes of these proceedings (§ 58-41-20(H).

- This Commission, in coordination with ORS, is authorized to initiate an independent study to evaluate the integration of renewable energy and emerging energy technologies into the electric grid for the public good. The integration study must evaluate what is required for electrical utilities to integrate increased levels of renewable energy and emerging technologies while maintaining economic, reliable, and safe operation of the electric grid (§ 58-37-60(A). <u>This is precisely the set of issues that are implicated by the proposed VIC</u>.

- Utility integrated resource plans must be conducted consistent with an updated statutory framework that requires the utility to consider a number of factors not currently considered by the utilities in development of their IRPs. (§ 58-37-40). Given that resource plans are the primary driver of avoided capacity calculations, the development of H.3659-compliant IRPs will likely have a significant impact on the utilities' avoided cost calculations.

If H.3659 is passed by the Senate and signed into law, it will require this Commission to revisit all of the issues related to avoided cost issues and the VIC that are at issue in this Docket, within the next six months.

C. The Merger Settlement.

In a Settlement Agreement filed with this Commission in November 2018, in Docket No. 2017-370-E, the Company agreed to several conditions on the Company's proposed merger related to utility-scale solar. These include proposing for this Commission approval, in calendar year 2019, avoided cost rates that provide accurate pricing for storage as a separate resource, or technology-neutral avoided cost rates for energy and capacity that provide accurate pricing for dispatchable renewable generating facilities such as solar + storage. Given the Company's obligation to propose new avoided cost rates later in 2019, it would be a waste of judicial resources for this Commission to resolve the pending avoided cost issues at the Hearing currently scheduled for April 3, 2019.

The Settlement Agreement also obligates the Company to participate in a stakeholder process (which is currently ongoing) to:

- Develop a fair, reasonable, and nondiscriminatory protocol for the curtailment of all legally dispatchable generating resources in circumstances where curtailment of solar resources is necessary due to system conditions on SCE&G's Transmission System or Distribution System, or otherwise required under the terms of those solar resources' interconnection agreements with SCE&G; and

- Devise and propose modifications to SCE&G' s interconnection procedures to expeditiously facilitate the addition of energy storage to solar projects currently in the interconnection queue and/or currently in operation, with the principal but nonexclusive goal of addressing operating conditions that may necessitate curtailment.

The outcome of that stakeholder process (i.e. a curtailment protocol and policy options for integrating storage to alleviate certain system issues) is likely to have a significant impact on the results of any VIC study. In light of that fact, SBA submits that it would be a waste of resources to resolve the VIC issues at the Hearing currently scheduled for April 3, 2019, and that it would be more prudent to consider those issues after the conclusion of the stakeholder process.

MOTION TO BIFURCATE ISSUES

The grounds for this Motion follow. Because any Commission ruling on avoided cost and VIC issues is likely to be superseded by developments happening later in 2019, SBA submits that *it would be a waste of the Commission's resources to resolve these issues at this time. A better course, that would* preserve the parties' and the Commission's scarce resources, *would be to bifurcate those issues from the other ones in the fuel case, and convene a hearing on avoided cost and VIC issues later in 2019.*

As discussed above, these developments are:

- Pending legislation passed by the South Carolina House and pending in the Senate that would require the Commission to conduct another avoided cost proceeding in 2019, and would also require an independent study assessing the factors on which the VIC is based.

- SCE&G has committed to propose new avoided cost rates in calendar year 2019.

- SCE&G has committed to a stakeholder process (which is already underway) to develop consensus curtailment protocols and other proposed policies that will have a material impact on the circumstances relevant to the VIC.

This Commission is not required by Statute, or by its own orders, to resolve the avoided cost and VIC issues at the Hearing currently scheduled for April 3, 2019. Specifically, S.C. Code Ann. § 58-27-865, (1976, as amended), does not prevent this Commission from deferring consideration of avoided cost and VIC issues. That provision requires this Commission to consider whether an increase or decrease in the base rate amount designed to recover fuel costs should be granted, based on the utility's estimates of the Company's fuel costs for the next 12 months. S.C. Code Ann. § 58-27-865(B), (1976, as amended). That amount is subject to true-up if it is later determined that the utility has over- or under-recovered its fuel costs in the previous 12-month period. Although avoided costs as defined under PURPA are included in the definition of "fuel costs related to purchased power," nothing in the statute requires the Commission to update the utility's avoided cost rates in every fuel proceeding.

Indeed, Duke Energy Carolinas, LLC and Duke Energy Progress, LLC have not updated their standard avoided cost rates since 2016, despite having gone through annual fuel Dockets since then. (A petition to modify those rates was filed in late 2018 and is currently pending before this Commission.) It is also worth noting that H.3659, which directs this Commission to consider avoided costs in a proceeding separate from the fuel Docket, does not contemplate any changes to S.C. Code Ann., § 58-27-865, (1976, as amended), – which suggests that the House, at least, does not view the convening of a separate avoided cost Docket as inconsistent with current law.

SBA notes that deferring consideration of revised avoided cost rates and the VIC charges is consistent with Commission precedent in the prior SCE&G fuel case Docket. In this Commission's Order No. 2018-255, issued in Docket No. 2017-2-E on January 24, 2018, this Commission granted a request by SCE&G for waiver of SCE&G's obligation to update its PR-2 rates, based on uncertainties arising from the failure of the V.C. Summer project. SCE&G argued in support of SCE&G's Motion that SCE&G "does not believe it would be prudent to update its PR-2 rate, given the uncertainty driven by the events just listed [i.e. the abandonment of VC Summer, the addition of the Columbia Energy Center]."

This Commission agreed, noting that it would "promote[] judicial economy and allow[] the issue to be addressed expeditiously", for this Commission to defer consideration of avoided cost issues. (See, This Commission's Order No. 2018-255 at 1). The same considerations apply here.[1]

It is especially important that the proposed VIC be considered in a later proceeding. As discussed above, the VIC assessment would to some extent be mooted by the pending legislation and the results of the stakeholder process. The VIC is a highly technical issue not appropriate for resolution on the abbreviated schedule of the fuel case Docket. And the impacts of the proposed VIC are far-reaching and could not only block future projects, but render already operational projects, non-viable.

Even if this Commission were to conclude, that it is not appropriate or permissible to defer consideration of avoided cost issues, it can, and should, defer consideration of the proposed VIC. The VIC, as proposed by the Company, is not a component of the Company's avoided cost calculations. Thus this Commission, whatever its obligations under S.C. Code Ann. § 58-27-865, (1976, as amended) is free to consider it in a separate Docket or phase of this proceeding.[2]

[1] SBA acknowledges that this Commission denied a Motion by SBA to bifurcate proceedings in last year's fuel case Docket. Commission Order No. 2018-267 (Apr. 4, 2018). However, that Motion was based on due process considerations arising from the fact that the parties did not have enough time to prepare a case on the rates, given the substantial changes in methodology proposed by SCE&G. Although SBA continues to have concerns about the pace of the fuel Docket, those are not the concerns that animate this Motion. Rather, SBA's Motion is grounded primarily on concerns of efficiency and judicial economy – the same concerns that prompted this Commission to grant SCE&G's Motion to delay updating SCE&G's avoided cost rates in early 2018.

[2] Integration charges could, in theory, be addressed in the context of avoided cost calculations. However, that is not what the Company has proposed here, as made very clear by the fact that the Company is proposing to impose the VIC on already-operating projects that have "locked in" their avoided cost rates.

RELIEF REQUESTED

For the reasons set forth above, SBA respectfully requests that this Commission bifurcate the issues in these proceedings, and defer consideration of the Company's avoided cost calculations and proposed VIC (i.e. all issues related to the proposed PR-1 and PR-2 tariff revisions), until later in 2019, either in a subsequent phase of this Docket or in a separate Docket. In the alternative, should this Commission decide that it must resolve avoided cost issues at the Hearing currently scheduled for April 3, 2019, this Commission should defer consideration of the proposed VIC until a later phase in this Docket, or a separately-convened Docket specific to the proposed VIC.

Respectfully Submitted,
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